Rental Housing Protection Act: Future Directions

Ontario

International Year of Shelter for the Homeless
1987
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Office of the Minister
Bureau du Ministre

Ministry of Housing
Ministère du Logement

777 Bay Street
Toronto, Ontario
M5G 2E5
416/585-7111

April 6, 1988

Over three million people in Ontario today live in rental accommodation. Our existing rental housing stock is an irreplaceable resource, one of the province's most valuable assets. For this reason, we must work hard to ensure its future.

The Government of Ontario believes that the more creative we can be in developing solutions aimed at easing our affordable housing shortage, the less likely it is that the province will face a future of declining housing standards, more restrictive regulations and loss of housing stock.

In December 1985, the government made a commitment to create a new supply of housing, and to restore and maintain the quality of existing accommodation.

An integral part of these efforts was our commitment to restrict the loss of private rental housing in the short term. This measure took the form of the Rental Housing Protection Act.

Our experience of the last two years, and my numerous discussions with individuals and groups over the last number of months have convinced me that we must develop a replacement policy for the existing legislation.

In doing so, we must ensure that the resulting policies reflect a number of principles. In broad terms, they are:

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1. the protection of our existing rental housing stock;

2. protection for tenants now living in our existing rental housing stock;

3. the encouragement and provision of suitable opportunities for home ownership;

4. the assurance of proper maintenance and the upkeep of general standards of all rental housing;

5. the equitable treatment of rental property owners.

This paper reflects the results of conversations with various groups, and the policy options set forth carry us one step further in the process of developing legislation.

The decision on the appropriate government response to these issues and options is very important. I believe that all interested parties should have an opportunity to review this matter and make recommendations to the government.

Based on this public response, specific legislation will be drafted for introduction later this year. The present legislation will be extended so that all concerned will have an opportunity to contribute to the policy process.

Identifying solutions which are both practical and creative is our goal. The government looks forward to discussing new approaches and innovative ideas during the upcoming months.

I look forward to hearing from you.

Sincerely,

Chaviva Hošek

Chaviva Hosek
Minister

DETAILED RESPONSES RELATED TO THE FULL RANGE OF ISSUES RAISED BY THE RENTAL HOUSING PROTECTION ACT ARE WELCOME.

PLEASE SUBMIT WRITTEN RESPONSES BY JULY 1, 1988, TO THE FOLLOWING ADDRESS:

MINISTRY OF HOUSING
RENTAL HOUSING PROTECTION PROGRAM
777 BAY STREET, 4th FLOOR,
TORONTO, ONTARIO
M5G 2E5

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BACKGROUND

(1) General

The Rental Housing Protection Act was enacted as a response to widespread concerns raised over the loss of affordable rental housing which was occurring primarily through the conversion of rental buildings to condominium or other forms of tenure (i.e. co-operative and co-tenancy), demolitions, severances and luxury renovations. Such activities were seen to be having a significant impact on the rental housing supply and exacerbating an already low vacancy rate in many urban centres.

Prior to the passage of the Act, conversion to condominium was governed under the Condominium Act where approval authority was given to the Minister of Municipal Affairs. The Minister could delegate approval authority for condominium plans to regional municipalities. During the review of condominium applications, area municipalities provided comment on the proposals and, in most instances, could reject any conversion that was considered to be undesirable. Several municipalities in the province had incorporated policies in their official plans restricting condominium conversions under certain circumstances including where vacancy rates are below a specified level.

Several municipalities with restrictions on condominium conversions had found owners circumventing the restrictions by

converting to co-operatives or co-tenancies, evicting tenants and then seeking condominium status. As a result of this activity, action was taken to protect existing tenants from eviction.

In 1983, the Landlord and Tenant Act was amended to protect tenants of larger buildings (7 units or more) from being evicted in the event of a co-op conversion. As well, the Ministry of Consumer and Commercial Relations brought in legislation to require disclosure to potential purchasers of co-op units that their right to occupy the unit is subordinate to that of the current tenant.

Despite these changes, there were continuing problems with profit-oriented co-op conversions. Sometimes tenants were evicted on the grounds that vacant possession was needed for renovations required in connection with the conversion. There were also on-going problems in the operation of some co-ops because of the absence of a statutory framework comparable to the Condominium Act.

Prior to the enactment of the Rental Housing Protection Act, the Association of Municipalities of Ontario and a number of individual municipalities expressed a desire to exercise some control in this area. Specifically, the municipalities asked the Province to establish the same powers of approval over profit-oriented co-op conversions that existed for condominium

conversions.

With respect to renovations, prior to the new rent review legislation coming into effect, many landlords were receiving very substantial rent increases allowed by the renovation provisions under the Residential Tenancies Act. In effect, where major renovations were undertaken, a landlord was permitted to raise rents to market levels. Under the Residential Rent Regulation Act all renovations are considered as capital expenditures. The net impact, under the new Act, is that renovations are treated more strictly than under the previous system.

Prior to the passage of the Rental Housing Protection Act, some control over demolition of residential properties was available to municipalities under the Planning Act, 1983. Municipalities with maintenance and occupancy by-laws could designate demolition control areas. Within these areas, the municipality may refuse to issue a demolition permit until the owner obtains a building permit for a replacement building.

Under the City of Toronto Act, 1984, the City was provided additional demolition control powers. It could withhold a demolition permit for a property with six or more dwelling units for up to a year after the owner has obtained a building permit for a replacement building.

The Ontario Heritage Act gives municipalities authority to refuse to permit alterations to buildings designated under the Act and to withhold approval for demolition of designated buildings for up to 180 days.

Unfortunately, comprehensive data indicating the extent of the loss of affordable rental stock resulting from conversions, renovations and demolitions is unattainable. In most Ontario municipalities information on these activities is either unavailable or kept on a piecemeal basis.

In the City of Toronto, conversions, demolitions and renovations are actively monitored. A 1985 CMHC Local Market Report indicated that, in Toronto, such activities had been increasing.[1] For example, during the period 1976-1980 only 3 apartment buildings containing 90 rental units were demolished. During the period January 1981 to January 1985, the city experienced a significant increase with 12 buildings containing 325 rental units being demolished and demolition permits for 7 buildings containing 240 rental units being issued.

No units were converted to condominium during the 4 year period April 1977 to April 1981 however, 17 buildings representing 971

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[1] Canada Mortgage and Housing Corporation, Local Housing Market Report, Toronto, July 1985.

units underwent condominium conversion during the 4 year period between April 1981 and April 1985.

The Report also claimed that, for various time periods between January 1978 and April 1985, demolition, conversion or renovation (with tenants evicted) had either occurred or was proposed in 240 rental buildings involving approximately 9,000 units. It should be noted that these statistics are not fully representative of the impact of such activity as they include only those rental buildings with six self-contained units or more.

In 1985, vacancy rates were below 1% in most urban centers of the province.[2] Although statistics were limited, there was a growing concern that the older rental housing stock in municipalities outside Toronto was being subjected to similar forces of change.

The magnitude of the condominium conversion problem alone was demonstrated by statistics for the period January 1983 to June 1986 which indicated that 3,550 rental units across the province had received final approval for condominium conversion.[3]

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[2] CMHC Rental Market Survey

[3] Figures provided by the Ministry of Municipal Affairs.

(2) Objectives of the Rental Housing Protection Act and Related Housing Goals

The Rental Housing Protection Act responded to the situation by restricting, for a period of two years, certain activities which reduce the stock of affordable rental housing. The legislation requires municipal councils to approve any proposals to convert, demolish or sever rental housing. In addition, municipal councils must approve renovations or repairs where a tenant is in possession and vacancy is required or if a unit has been vacant for less than one year. The Act applies to all municipalities with a population of more than 25,000 and could also be applied in smaller municipalities which have a rental shortage when brought in by regulation.

Residential complexes of 4 units or less are generally exempted from the Act. However, in all municipalities, approval of municipal council is required to convert housing which contains one or more rental units to a condominium.

In addition to a Government commitment to take a strong stand against development pressures that remove affordable rental stock, the Assured Housing Policy also announced several strategies designed to assist in meeting the need for a supply of rental housing.

One such effort in this regard is the Residential Rent Regulation

Act, 1986 which was designed to provide better protection for tenants, while addressing the concerns of landlords and builders as well. The Act contains a number of measures designed to support investor confidence in the private rental market. The new provisions for a return on invested equity for post-1975 buildings as well as the creation of a flexible rent review guideline which responds to changing economic conditions were designed to encourage new rental construction.

Otner housing supply initiatives are more specifically related to meeting the need for affordable rental housing. These include:

- increased levels of rent-geared-to-income housing for qualified low and moderate income households;
- increased support for municipal, private and co-operative non-profit housing;
- producing moderate-cost housing units, primarily through conversions of non-residential buildings;
- encouraging homeowners to rent unused space in their homes;
- loans to assist in the conservation of the low rise rental stock;
- assisting homeowners in ensuring that their homes remain in a reasonable state of repair by bringing them up to minimum municipal standards;
- support for disabled persons to make housing modifications that increase accessibility;
- encouraging neighbourhood intensification;
- combining housing supply with support services under the Supportive Community Living program; and
- supply strategies which rely on underutilized government land.

The role played by the Rental Housing Protection Act in preserving the existing affordable rental stock has been consistent with the broader housing supply policy objectives of the Government. It is the Government's intention that these and other initiatives will assist in creating and maintaining an abundant supply of housing to meet Ontario's needs.

(3) Economic Indicators and Housing Market Trends

This section provides a brief overview of Ontario's economic forecast through 1988 and highlights several trends in the province's housing market.

1988 Ontario Economic Forecast

The booming housing market in southern Ontario has been a leading factor in the province's strong economic performance during 1986 and 1987. A high level of residential investment activity has occurred during a very favourable economic climate.

The recent performance of stock markets around the world has injected a new element of uncertainty into the 1988 economic forecast. However, despite these uncertainties the forecast is that the current expansion of the Ontario economy will continue in 1988, but at a somewhat more moderate pace than previously expected.[4] The Ministry of Treasury and Economics has forecasted that:

- Real GDP growth will decelerate from 3.9% in 1987 to 2.8% in 1988;
- Inflation is forecast to moderate from 5.1% in 1987 to 4.7% per cent in 1988;
- The unemployment rate in Ontario is expected to fall from 6.2% in 1987 to 5.8% in 1988;

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[4] Ministry of Treasury and Economics, Economic Outlook and Fiscal Review, (Toronto: Ministry of Treasury and Economics, 1987).

- Mortgage and interest rates are forecast to fluctuate slightly around the current levels at which they are resting.

Trends in the Ontario Housing Market

New Supply

The total number of housing starts for 1987 reached approximately 105,000. This figure represents the largest number of Ontario housing starts for a single year since 1973.[5] The Ministry of Housing forecasts total starts to decrease for 1988 to 87,000.

The Ministry of Housing estimates that 1987 rental starts totalled 16,750 with the private market producing an estimated 7,650 starts without any form of explicit assistance from government. Registered condominium buildings that are to be marketed totally as rental are included in this total. Activity in this category increased approximately 55% in 1987.

Government programs account for the remaining 9,100 rental starts estimated for 1987. These starts fall under two categories: private-assisted and socially-assisted. Private-assisted rental starts include those units that are assisted under the following programs: MURB (Multiple Unit Residential Building Program), CRSP

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[5] Canada Mortgage and Housing Corporation, "News Release", (Toronto: January 14, 1987).

(Canada Rental Supply Program), CORSP (Canada-Ontario Rental Supply Program), Renterprise and Convert to Rent. In 1987, approximately 1,600 rental units were initiated under these programs.

Socially-assisted production accounted for the remaining approximately 7,500 rental starts in 1987.[6] Socially-assisted rental starts include co-op, public and private non-profit and CMHC rural and native rental housing. The activity in 1987 represents a 140% increase compared to the 3,114 starts in 1986. This increase in social housing activity is due to many of the projects approved under the Assured Housing program receiving necessary municipal approvals and getting underway.

The Ministry of Housing forecasts rental starts to rise to 20,000 units in 1988. The recent increase in rental starts (i.e. rental starts in 1986 totalled 11,700) is an extension of Ontario's strong economic climate and is due in large measure to increased levels of social housing activity. The strength in rental starts for 1988 is likely to come from the socially-assisted category as the government sponsored units work their way into the market. Socially-assisted production is expected to increase by approximately 41% to 10,600 units in 1988.

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[6] Starts in 1987 are estimates based on CMHC and Ministry of Housing program data.

There are a number of factors which will likely sustain private rental production. These include: attractive interest rates; the expectation of fast rental of units in new buildings due to low overall vacancy rates; and the growth in income groups capable of paying upper-end-of-market rents.

In addition to those factors identified above, the recent overhaul of Ontario's rent review system may be influencing potential investors to return to the rental housing sector. It is anticipated that the minimum return on investment which the new rent review system allows will result in even higher levels of rental production in the future.

Impact of Condominium Boom on the Rental Market

The current boom in apartment condominium starts, particularly within Metro Toronto, has lead to an increase in the supply of rental units as smaller investors use condominiums as a form of investment. There were approximately 18,000 condo starts in 1987[7] which represents an 83% increase over the 9,814 condo starts in Ontario during 1986. In order to put the 1987 condominium production figures in context, there were 2,657 condo starts in 1983.

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[7] Ministry of Housing estimate based on CMHC monthly statistics for centres of 10,000+ population.

Rent levels for new condominium units are typically at the high end of the market. Nevertheless, condominiums do serve as an important source of new rental supply. The recent surge in condominium construction is an important source of supply for the rental market.

The following table contains data on the number of condominium units that are renter-occupied. This information is based on assessment data for condominium units within Metropolitan Toronto, and indicates a significant rise in the proportion of condominium units occupied by tenants during the 1980's.

RENTER-OCCUPIED CONDOMINIUM UNITS (1981-1986)

METROPOLITAN TORONTO

Year	Total Units* Occupied	Tenant-Occupied	Percentage of Total
1981	53,887	11,722	22%
1982	60,328	15,889	26%
1983	62,710	16,896	27%
1984	67,437	20,495	30%
1985	70,929	22,935	32%
1986	74,992	24,484	33%

* Units are Row Condominium and Apartment Condominium

Source: Metropolitan Toronto Planning and Development Department--Based on Assessment Data

As large numbers of condominium units come on stream during 1988 and 1989, renter-occupied units as a proportion of the total will likely continue to rise. In addition, a significant increase of new condominium units thrust onto the rental market at the same time may cause a downward pressure on initial rent levels.

Vacancy Rates Indicate Shortage

Despite these encouraging signs, there remains a significant backlog of need for rental housing. The vacancy rate for most major centres remains at less than one per cent. A summary of vacancy rates for privately initiated apartment units is found below:

VACANCY RATES IN APARTMENT STRUCTURES OF SIX UNITS AND OVER

Census Metropolitan Area	1986		1987*	
	April	Oct.	April	Oct.
Hamilton	0.5	0.3	0.3	0.3
Kitchener	0.4	0.2	0.4	0.2
London	0.5	0.7	1.0	1.0
Oshawa	0.2	0.2	0.1	0.3
Ottawa	1.5	1.9	2.1	1.6
St. Catherines	0.7	0.8	1.0	0.5
Sudbury	1.0	0.9	1.1	1.0
Thunder Bay	1.1	2.4	3.1	2.1
Toronto	0.3	0.1	0.1	0.1
Windsor	0.5	1.0	1.1	0.7
ONTARIO	0.6	0.6	0.6	0.5

Source: CMHC Rental Market Survey (24 centres)

* Prior to 1987, structures completed 1-6 months prior to the survey date were excluded from the survey. From 1987 onward, only structures completed 1-3 months prior to the survey date are excluded from the survey.

In addition to the supply shortages presently encountered, steady growth in the demand for rental housing has occurred and is continuing. Recent increases in migration levels illustrate these growing demand pressures. Ontario is currently experiencing a dramatic influx of population. Combined net international/interprovincial migration has risen from a low of approximately 1,000 migrants in 1980-81 to an estimated 90,000 (based on preliminary figures) in 1986-87.[8]

For the fifth consecutive year, Ontario ranked as the leading destination for inter-provincial migrants. Preliminary figures indicate that a total of 45,790 more people moved to Ontario from other provinces than left in 1986-87. Most of the people coming to Ontario (70% in 1984-85) are seeking to live in the Greater Toronto region.

It is expected that the demand pressures for rental housing will remain strong through 1988.

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[8] Data provided by the Ministry of Treasury and Economics.

PERFORMANCE OF THE RENTAL HOUSING PROTECTION ACT

(1) Applications

The Rental Housing Protection Act came into force on July 10, 1986. Under the Act, municipal councils are required to review applications and approve proposals to convert, demolish, renovate or repair or sever rental housing in Ontario.

As of December 31, 1987, some 30 municipalities had received 162 applications under the Act. The applications involve 3,118 rental units. The breakdown is as follows:

APPLICATIONS RECEIVED UNDER RHPA

Activity	Applications		Units	
Demolitions	38	(23%)	651	(21%)
Conversions				
Condominium	42	(26%)	2309	(74%)
Other	14	(9%)	35	(1%)
Renovation/Repair	44	(27%)	111	(4%)
Severance	24	(15%)	12	(<1%)
TOTAL	162	(100%)	3118	(100%)

The status of these applications as of December, 1987 is as follows:

STATUS OF APPLICATIONS

Activity	Units	Refused/ Withdrawn	Approved	Pending	Appealed
Demolitions	651	22	283	315	31
Conversions					
Condo	2309	303	705	520	781
Other	35	5	20	10	0
Reno/Repair	111	6	54	51	0
Severance	12	0	12	0	0
TOTAL	3118	336	1074	896	812

The municipalities of Toronto, Ottawa and London have received 53% of all applications. However, these applications relate to only 30% of the total units. Applications relating to 70% of the units originated in municipalities other than these centres.

CONCENTRATION OF APPLICATIONS

Municipality	Applications	Units
London	20 (12%)	503 (16%)
Ottawa	43 (27%)	197 (6%)
Toronto	22 (14%)	260 (8%)
Other	77 (47%)	2158 (70%)
TOTAL	162 (100%)	3118 (100%)

Applications for municipal approval of condominium conversions involve the majority of rental units (2309). For the most part,

applications have originated in the large metropolitan centers of the province:

APPLICATIONS FOR CONDOMINIUM CONVERSION

Municipality	Units	Refused/ Withdrawn	Approved	Pending	Appealed
Chatham	60	-	60	-	-
London	451	24	100	327	-
North Bay	91	22	-	-	69*
North York	50	-	-	-	50
Ottawa	48	39	-	9	-
Sault St Marie	188	-	188	-	-
Timmins	48	-	48	-	-
Toronto	128	-	11	2	115
Waterloo	124	-	44	80	-
Windsor	443	218	225	-	-
York	547	-	-	-	547*
Other	131	-	29	102	-
TOTAL	2309	303	705	520	781

* These applications have been petitioned to Cabinet

Detailed information respecting other activities covered by the Act, (i.e. conversions to a use other than condominium ownership, severances, demolitions and renovations or repairs) is provided in Appendix A.

(2) **Exemptions**

Sections 3 and 9 of the Act allow the Lieutenant Governor-in-Council, that is, Cabinet, to exempt specific properties from the Act by regulation. As of December 31, 1987, 36 exemption requests had been received respecting properties located in 11

municipalities. The City of Toronto accounted for 20 (56%) of the requests. The applications for exemption relate to 1034 rental units.

The largest single request was for exemption of 324 rental units from the demolition provisions of the Act. The request was approved. The property owner has agreed to a number of conditions which will protect the existing tenants including providing alternative rental accommodation on the site.

Information respecting the disposition of exemption requests received thus far is contained in the following table:

EXEMPTION APPLICATIONS

Activity	Appl.	Units	Refused/ Withdrawn		Approved		Pending	
Demolition	9	(503)	2	(75)	7	(428)	-	
Conversion								
Condo	8	(351)	5	(174)	2	(147)	1	(30)
Other	3	(19)	1	(5)	2	(14)	-	
Reno/Repair	12	(157)	3	(51)	8	(80)	1	(26)
Severance	4	(4)	2	(0)	2	(4)	-	
TOTAL	36	(1034)	13	(305)	21	(673)	2	(56)

(*) Two condominium conversion requests did not specify the number of units involved.

Of the exemption applications approved, 120 units are in fully vacant buildings and, in the Ministry's opinion, are not subject to the Act.

(3) Pre-Act and Post-Act Comparisons

A complete historical picture of conversions, demolitions, renovations and other such activities affected by the Rental Housing Protection Act is not available. Prior to passage of the Act on July 10, 1986, no systematic record was kept of these activities and their effect on the stock of residential rental properties by either municipalities or any provincial agency. One exception is condominium conversions. Information about these is available as a result of the process in place under the Condominium Act.

During the first half of 1986, condominium conversion projects approved by the Ministry of Municipal Affairs or delegated authorities were as follows:

Jan-June 1986

	Applications	Units
Draft Approved	6	172
Final Approved	14	1384
TOTAL	20	1556

During the second half of 1986, after the new Act was in effect, condominium conversion approvals dropped markedly:

July-December 1986

	Applications under RHP Act	Units
Approved	4	222

During 1987, there was an increase in municipal approvals of condominium conversion applications made under the Act. However, the majority of the units involved are at various stages of the appeal process.

The activity in 1987 indicates that 17 applications representing 1264 units have been approved. Four of these approvals by municipal councils, involving 781 units, have been appealed to the Ontario Municipal Board. The OMB recently reversed the City of York's decision to approve the conversion of 547 rental units to condominium. Similarly, the OMB overturned a City of North Bay decision to approve the conversion of 69 rental units to condominium. Both OMB decisions have been petitioned to Cabinet.

Another effect of the legislation is the amount of activity which has been deterred simply because the Act is in place. Statistics are not available, however, a number of municipalities have indicated that while many enquiries have been received respecting conversions, demolitions etc., the presence of the legislation has caused a number of landlords to abandon their plans rather than make an application for municipal approval.

ISSUES RAISED BY THE RENTAL HOUSING PROTECTION ACT

(1) Consequences of Development Restrictions

In developing policies for the future it is essential to recognize the nature of the various interests and some of the major consequences associated with such a decision.

Development controls, by their very nature, place restrictions on an owner's right to make decisions as to the future use of his property. As a result, it is argued that controls in any form will be viewed as a substantial disincentive to private sector producers of rental housing and will reduce investor confidence in the private rental market.

The regulation of certain development activities over a period of time may have significant consequences as well. For example, fears have been expressed that the continuation of controls contained in the Rental Housing Protection Act will ensure the deterioration of the rental stock as landlords can be expected to pull back from much needed upgrading of their property.

Furthermore, it is claimed that the Rental Housing Protection Act might provide an actual incentive for property owners to let their buildings deteriorate. Once found to be "unsafe and unfit for human habitation" an application for renovation, repair or

demolition may be approved by municipal council.

On the other hand, it is arguable that the circumstances which prompted the Government to implement development controls in July, 1986 have not changed substantially and that restrictions over removing affordable rental housing from an already tight rental market must be continued in some form.

The loss of affordable rental stock affects not only current tenant households who may face eviction but future tenants who may be seeking rental accommodation in a particular municipality. Thus, it is argued that measures should be continued to protect the province's existing affordable rental stock and the security of tenure for tenants in this accommodation.

There is general agreement that the Act involves significant administrative requirements on municipalities.

Since the passage of the Rental Housing Protection Act, a number of groups including municipalities, landlord and tenant groups, professional associations and the building industry have raised certain issues and concerns with respect to the legislation.

This section of the paper will outline some of the major issues which have been identified.

(2) Mandatory vs. Permissive Legislation

Under the Rental Housing Protection Act, local municipalities with a population greater than 25,000 must consider applications for the conversion, demolition, renovation or repair and severance of rental housing stock. All municipalities must render decisions on condominium conversion applications. The Act is mandatory.

Municipal councils across the province have diverging views of how necessary the Act is in order to preserve the affordable rental housing stock in their jurisdiction. Vacancy rates and local housing market conditions vary considerably among municipalities. Some have argued that the development controls contained in the Rental Housing Protection Act should be "permissive" giving municipalities the option of adopting provisions of the Act by by-law, depending on local circumstances and pressures.

Others have concerns that permissive legislation could result in "patchwork" controls which can be particularly problematic in metropolitan areas.

(3) Application Fees Imposed by Municipalities

The Rental Housing Protection Act allows municipalities to set their own fees for administering applications made under the Act. Discrepancies among municipalities have developed in relation to the size of fees charged.

It has been argued, for example, that the $1,500 application fee charged by the City of Toronto is too onerous and may discourage small landlords, in particular, from making an application under the Act. While it is understood that costs for municipalities will vary (e.g. publishing notices in local newspapers), it has also been argued that fee levels should not serve as a barrier to those wishing to make application under the Act.

(4) Zoning Enforcement/Illegal Units

Under the Planning Act, 1983 municipalities have the authority to pass zoning by-laws. Where buildings are found to contravene such a by-law, fines may be imposed and the buildings may be required to conform to the by-law. A potential for conflict with the provisions of the Act develops where rental units found to be illegal are ordered removed by a municipality and such action requires an application to be made under the Rental Housing Protection Act.

The Ministry of Housing has expressed concern in the past over restrictive municipal zoning practices. The Ministry is aware that many activities involving the intensification of existing housing to provide new rental units are in potential conflict with by-laws which either do not permit denser uses, or which permit them limited by stringent parking or other performance standards. The units themselves are, in many cases, in conformity with health standards and the size requirements of the Ontario Building Code. However, the size requirements of zoning by-laws may serve to zone out this source of affordable housing.

The Ministry has taken the position that the Rental Housing Protection Act protects all affordable rental housing. Thus, legal and illegal (those that conflict with local by-laws) units should be treated equally under the Act. For municipalities considering applications under the Act, equal protection of legal and illegal rental units could result in a municipality being placed in the position of supporting the retention of rental units which constitute a zoning violation.

The central issue relating to the Act involves the protection of illegal units vs. the right of municipalities to enforce their zoning by-laws. However, the broader conflict between residential intensification initiatives and restrictive zoning practices must also be resolved.

(5) Approval Criteria for Applications Under the Act

A municipal council can approve an application to allow an activity which is restricted by the Rental Housing Protection Act if the application meets at least one of the following criteria:

1. Where the proponent has provided satisfactory accommodation for the current tenants and has provided comparable rental housing at the same price in the same area; or
2. where, in council's opinion, the proposal does not adversely affect the supply of affordable rental housing in the municipality; or
3. in the case of a demolition or renovation, council may approve if the building is found to be unsafe and unfit for human habitation and will continue to be so if the proposed renovations are not carried out.

Difficulties have arisen in interpreting the criteria. For example, the Act provides no definition or guidelines to assist in determining what is meant by "same area" in the first criterion or "adversely affect" and "affordable rental housing" in the second criterion.

The Ontario Municipal Board, in the case of Park Towers (400 Walmer Road, City of York), operationalized these terms.

In particular, the Board provided judgement with respect to the second criterion in its May 11, 1987, decision on the appeal of the City of York's decision to allow the conversion of 547 units in Park Towers to condominium ownership. The Board established a threshold of affordability in order to assess the impact of the

proposed conversion. In so doing, the Board concluded that affordability must relate rent to income levels.

The Board defined the incomes to be considered as all households in Metro Toronto and, in defining affordability, selected the cut-off income amongst this group as the per-household income which is sufficient to include two-thirds of the households. The Board also chose a ratio of 25% of income to calculate affordable rent. The result of these determinations was that the Board defined affordable rental housing in York to be rental units renting for not more than $979 per month.

The central issue is not the approach taken by the Ontario Municipal Board in this case, but whether more explicit criteria are required to assist those making decisions on applications made under the Act as well as on appeals that may result therefrom. However, providing more guidance in applying the criteria would result in less municipal autonomy than is provided for in the current legislation. The statistics presented above show that, rather than being a rigid strait-jacket, the Rental Housing Protection Act has been a somewhat flexible instrument, applied quite differently in different localities.

(6) Renovations and Repairs

Subsection 4(1)(c) of the Act states that no rental residential property or part thereof, shall be "renovated or repaired if a tenant is in possession of a rental unit and vacant possession of the rental unit would be required, or if the rental unit has been vacant for less than one year" unless approved by the local municipality.

Renovations and repairs have been included in the Act primarily to limit luxury renovations and the eviction of tenants for this purpose.

The Regulations also allow for municipal approval of a renovation or repair application where the property is found to be unsafe and unfit for human habitation. Several municipalities suggest this has encouraged owners to let their buildings run down in order to have the properties declared unsafe and unfit.

Difficulties have been encountered in determining whether the work proposed by the owner actually requires vacant possession. Other issues include whether the renovation proposed is associated with a non-residential use which will result in the permanent loss of affordable units and whether the renovation is associated with a significant increase in rent levels.

Another issue relates to maintenance work and whether it is necessary to treat maintenance differently than renovations and repairs, particularly for units which have been vacant less than one year. It has been suggested that the current provisions of the Act discourage the routine maintenance of rental units between tenancies. Concerns have also been raised regarding the impact of the renovation or repair provisions on landlords who wish to make legitimate repairs and necessary renovations to extend the useful life of a building.

Many have suggested that a continuation of the existing provisions will result in a serious deterioration of the rental stock.

(7) Vacant Buildings

There is some controversy over whether the Rental Housing Protection Act applies to vacant buildings. In the Ministry's opinion, vacant buildings are not covered by the Act.

It is the Ministry's interpretation that in order to meet the Act's definition of a "rental residential property", a building must contain at least one rental unit. A "rental unit" is defined by the Act "as any living accommodation which is used as rented residential premises..." The Ministry's interpretation is

that the words "is used" and "rented" both imply use at the present time rather than habitual or past use. Therefore, if there is no "rental unit" in a building, the building is not a rental residential property and not subject to the Act.

Several municipalities have interpreted the Act in such a manner as to apply to buildings which are entirely vacant. Concern has been expressed that exempting vacant buildings may encourage landlords to harass their tenants or illegally evict them in order obtain a vacant building.

(8) Approval Process for Condominium Applications

Prior to the enactment of the legislation, authority to render decisions on condominium conversion applications rested with the Minister of Municipal Affairs and any municipality to whom authority had been delegated. Under the Act, this authority now rests with local municipalities. Applications for new condominiums or for existing residential rental properties exempted from the Act continue to be dealt with by the Ministry of Municipal Affairs or the delegated authority.

Some argue that the delegation of authority for approval of condominium applications has become fragmented, confusing and has increased the potential for inconsistent treatment of applications. They also argue that it places complex

administrative responsibility for condominium conversions with small municipalities who have limited staff resources.

(9) The Extent of the Pent-Up Demand

Given that the Act is in place with a repeal date of June 30, 1988, many property owners may have put their plans on hold. Several municipalities have expressed concern that, should the Act be repealed, a significant number of rental units could be lost very quickly.

It is difficult to determine the extent of the pent-up demand, however, the lack of application activity in several larger municipalities in the province suggests that property owners may have merely postponed their plans in anticipation of the repeal date.

(10) Rented Condominium Units

Rental units registered as condominiums are not subject to the Rental Housing Protection Act, although rented condominium units are subject to the Landlord and Tenant Act. The law treats condominium units in the same way that it does other ownership property. For instance, owners of a single family home may

choose to rent their home for a time. Then, under conditions laid down by the Landlord and Tenant Act, they can evict their tenant and regain possession of their home. The situation is identical for a condominium.

Some have argued that condominium units of rental tenure should be subject to the Rental Housing Protection Act to protect their rental status and provide additional security of tenure for existing tenants.

The contrary argument is that removing the option of owner-occupation of rented condominium units would further restrict property rights and result in a decrease in the number of investors willing to purchase units in a building and offer them for rent. Such an extension of the Act could thus have a negative impact on a significant source of future supply.

(11) Home Ownership Provided Through Condominium Conversion

Rental Housing Protection Act control over conversion of rental units to condominium raises the issue of whether it is desirable for existing tenants to be able to purchase their units. Some argue that affordable home ownership can be realized by tenants through conversion of rental buildings to condominium. For many tenants, it is argued, this alternative represents their only

hope for home ownership. It is proposed that tenants who want to own their current accommodation should be provided the opportunity to do so.

In the province's larger urban centres particularly, conversion of an apartment to condominium can offer low cost home ownership on a far more economic basis than most other alternatives available. The injection of equity that would occur with a condominium conversion provides a mechanism for financing the upgrading of aging housing stock.

While arguing that this option should be made available to current tenants, there is also recognition that security of tenure must be provided to those existing tenants who do not wish or are unable to purchase their units.

The countervailing arguments include concern for the loss of affordable rental stock for other present and future tenants seeking rental accommodation in the municipality as homeownership is achieved at the expense of the existing rental stock. It is also argued that the converted units may not remain affordable as resales occur.

(12) Co-operative Ownership

A rental residential property is defined under the Rental Housing Protection Act as a "co-operative" if owned or leased through various arrangements. A property may become a co-operative following the sale or lease of a percentage interest to more than one person in a building together with a right to occupy a unit (i.e. co-owner co-op). Alternatively, a corporation may own the building with its shareholders having the right to occupy a unit through an agreement with the corporation (i.e. equity co-op). The Act regulates the conversion of rental buildings to such co-operatives. In addition, conversion of these common law co-operatives to condominium, is controlled by the Rental Housing Protection Act if there are any rental units in the property.

In the case of existing legal co-operatives, certain difficulties may arise by virtue of the status of the building. Foremost are the problems frequently encountered in finding lenders willing to re-finance co-owner co-ops. Financial institutions are often reluctant to provide funds for such buildings.

Other concerns relate to property tax treatment of co-owner co-ops and the impact of the Landlord and Tenant Act. Owner-occupied units in a co-owner co-op building are currently taxed at the rental property tax rate which is approximately twice the residential rate charged to single family dwellings and

condominiums.

With respect to the Landlord and Tenant Act, tenants of larger co-op buildings (7 units or more) are protected from being evicted by the individual who is given the right to occupy the unit ("co-operative owner") unless it had previously been occupied by him or one of his immediate family members. In effect, the owner's right to occupy the unit is subordinate to that of the current tenant. Co-operative owners argue that this provision causes hardship for some owners. In addition, the supply of available units has been reduced as some co-operative owners have refused to rent their units given the difficulties encountered in gaining possession at a later date.

It is suggested by some that many of these problems could be addressed by allowing the conversion of buildings to condominium status. Tenant groups would argue that allowing unfettered conversion of this type to take place would also involve the removal of the special security of tenure protection currently provided tenants in co-op buildings.

(13) Apartment Hotels

The Rental Housing Protection Act requires that the conversion of a residential rental building to an "apartment hotel" be approved by municipal council.

Prior to the introduction of the Act a significant loss of affordable rental accommodation was occurring through conversion to various commercial forms of temporary housing such as apartment hotels. Building owners are often able to increase their revenues significantly by furnishing units and offering them for rent by the week or month at much higher rent levels. In addition, once converted from residential rental use to transient accommodation, these units may be exempted from rent review.

Although such conversion activity is now controlled by the Rental Housing Protection Act individual tenants sometimes become aware that their building is being converted, unit by unit, to an apartment hotel. Stronger enforcement is proposed by some as a means of addressing this concern.

With respect to new apartment hotel projects, it is argued that they are not financially viable as such during the initial years and that it is necessary to market these buildings as rental until an adequate cash flow situation is achieved. However, although the owner may have always intended to use the building as an apartment hotel, once the units are rented the building is considered to be a residential rental property and municipal approval would be required before the building could be used as an apartment hotel.

It is argued that, given the controls over such activities, financing for apartment hotel projects is often difficult to obtain. Some have suggested that the Act should allow such a conversion where it is demonstrated that the original intended use of the building was as an apartment hotel.

(14) Enforcement of the Act

It has been argued that the current legislation wrongfully places the onus on tenants to enforce the Act. Municipalities realize that they are able to prosecute but feel that the Act should provide greater clarity on this point. One proposal indicated that municipalities should have the same status to prosecute as currently delegated under the Building Code Act.

It also has been argued that the province should take full responsibility for enforcing its own legislation. Others believe that it makes more sense for municipalities to enforce this type of legislation but with the province providing additional resources to allow proper enforcement to occur.

(15) Petition to Cabinet

The Act now allows for a decision of a municipal council to be appealed to the Ontario Municipal Board. OMB decisions can also be petitioned to the Provincial Cabinet by any party to the hearing.

The provision of a petition route to the Cabinet has been criticized by a number of groups. Some argue that the additional appeal to Cabinet results in unnecessary delays. Others are more dismayed by the direct political involvement such a petition brings with it. Ministers themselves may be concerned that the details of past debate over individual buildings should be taking time on the overloaded agenda of public policy.

APPROACHES FOLLOWED IN OTHER JURISDICTIONS

This section examines conversion policies in jurisdictions outside Ontario.[9] Jurisdictions considered below include Nova Scotia, Quebec, Manitoba and British Columbia as well as selected cities in the United States.

The policies in place, with the exception of Nova Scotia, relate primarily to condominium conversions. Research indicates that the conversion policies in other jurisdictions are not as broad based as Ontario's Rental Housing Protection Act.

Ontario's fundamental policy objective of preserving the existing affordable rental stock is not the focus of policy in the jurisdictions studied. The approaches taken, with the exception of Nova Scotia, appear more designed to provide buyer and tenant protection during the condominium conversion process rather than to preserve the rental stock.

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[9] Written information was utilized and supplemented by phone conversations with public officials.

(1) Rental Property Regulation in Nova Scotia

The approach followed in Nova Scotia is more closely related to that of Ontario's Rental Housing Protection Act than policies in any other jurisdiction studied. Legislation in Nova Scotia goes beyond simply affording buyer and tenant protection during the conversion process. It is designed to protect the current rental supply. The controls address all types of proposed conversions of the rental stock.

The Rental Property Conversion Act was introduced in Nova Scotia in 1982 and authorized the Province to prohibit all conversions of rental property. The amended Act now prohibits the conversion of rental property to any other use unless the property is to be used by a non-profit community group to provide housing for people with special needs. Rental buildings with less than four units are exempt from the Act. The demolition of rental buildings is not covered by the Act and this activity is left to the municipalities to administer.

In 1982, the rental vacancy rate in the Halifax-Dartmouth area was under 1%, a situation which precipitated the legislation. According to CMHC data, the vacancy rate was 0.6 in October, 1985 and it rose to 2.3% in October, 1986 and 4.4% in October, 1987. Despite this easing of the market, there were no plans to remove or further amend the existing controls as of the date this paper was published.

(2) The Quebec Approach

A ban on all conversions of rental housing to condominiums was imposed by the Quebec government in 1975. The government announced it's intention to lift the moratorium on condominium conversions in 1986 and new legislation was passed in late 1987.

Under the new policy,[10] conversion of rental buildings to condominiums is prohibited within the territory of the Montreal Urban Community. However, each municipality within the Community may enact a by-law allowing it to grant exemptions and permit conversions under certain circumstances. Elsewhere in Quebec, condominium conversion is allowed, however, these municipalities retain the right to adopt a by-law limiting conversions in their territory or permitting such activity to take place under certain conditions.

The new legislation also contains a series of conversion-related measures which guarantee to existing tenants adequate notice of the landlord's intention to convert, lifetime security of tenure in the event of a conversion and a right of first refusal favoring the tenant/occupant at the time of the unit's first sale. In addition, provisions ensure that purchasers of a converted unit have adequate information including an expert's

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[10] Ministry of Municipal Affairs, responsible for Housing, "Modifications to the Rental Housing Legislation", (Quebec City, November 1987).

report respecting the quality of the building and an information prospectus should the unit be located in a building of five units or more.

In order that all of the players involved abide by the rules, the Regie du Logement must authorize conversions to condominiums. The Regie must refuse an application should it determine that major work has been undertaken with a view to evict tenants and ready the building for conversion or if repossession was illegally obtained. Under these circumstances, a new request for authorization to convert could not be submitted for three years following the date of refusal.

According to CMHC, the vacancy rate in Montreal for privately initiated rental apartment structures containing six or more units was 3.6% in October, 1987 as compared to 1.8% in October, 1986 and 1.6 in October, 1985. The October, 1987 vacancy rate for Quebec City was 5.6% as compared to 3.2% in October, 1986 and 1.5% in October, 1985.

(3) Conversion to Condominium in Manitoba

In Manitoba there are no specific policies designed to protect the rental housing stock from conversion, demolition or luxury renovation.

Manitoba enacted the Condominium Act in 1968 and later amended it in 1985. The Act requires a statement, upon registration, disclosing whether or not the property contains residential rental units which are occupied by tenants.

The Act contains provisions for adequate notice, right of first refusal to purchase a unit and the right of the tenant to remain for the greater of two years or the number of years he or she has occupied a unit. In addition, future rent increases would continue to be regulated by rent review legislation.

According to data provided by the City of Winnipeg's Department of Environmental Planning, a large number of rental units in Winnipeg (approx. 10,000 between 1974 and 1985) have been converted to condominium. However, the majority of all condominium units in the city are still of rental tenure. Many rental buildings were registered as condominiums in the early 1980's in anticipation of tighter conversion and rent control legislation.

According to CMHC, the October, 1987 vacancy rate in Winnipeg was 2.8% as compared to 1.6% in October, 1986 and 0.9% in October, 1985.

4) British Columbia Approaches to the Issue

There are no province-wide legislative measures to preserve the existing rental housing stock in British Columbia, nor is there any intention to introduce or amend legislation to protect rental buildings.

The City of Vancouver has a conversion policy which protects tenants who may not choose or are unable to purchase their unit and ensures that buildings proposed for conversion are in a reasonable state of repair.[11]

Applications for conversion must include verification that at least two-thirds of existing tenants have consented to the conversion. Tenants may be interviewed by municipal officials to ensure they are aware of their rights. When reviewing a conversion application, City council will consider the mix of housing in the area (i.e. rental vs. privately owned), and the quality of the building in terms of its life expectancy and projected increases in maintenance costs.

In allowing a conversion to take place, Council may impose any other terms it deems necessary. For example, Council may demand that a relocation service be provided for tenants who do not wish

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[11] City of Vancouver, Planning Department, Strata Title and Cooperative Conversion Guidelines, 1987.

to purchase their units with the costs borne by the applicant.

CMHC data indicate that the vacancy rate in Vancouver in October, 1987 was 1.1% as compared to 0.9% in October, 1986 and 2.2% in October, 1985.

Experience in the United States

The conversion of rental buildings to condominiums took root in the United States during the 1970's. A report prepared by the U.S. Department of Housing and Urban Development (HUD) in 1980[12] found that more than 366,000 rental units were converted to condominiums or housing co-operatives during the 1970-1979 period.

During this period almost half of the state governments enacted legislation to protect current tenants and/or purchasers of converted dwellings. Various municipalities have since also adopted such measures while some have opted for a moratorium over such activities in order to allow sufficient time to establish a policy framework.

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[12] U.S. Department of Housing and Urban Development (HUD), The Conversion of Rental Housing to Condominiums and Cooperatives, a National Study of Scope, Causes and Impacts, June 1980.

Most of the moratoria imposed in the United States were of relatively short duration, generally ranging from 30 days to one year.

Today, with legislation in place in most jurisdictions to protect existing tenants and purchasers, the United States allows conversion virtually throughout its territory.

Condominium conversion policies in place in the United States generally do not attempt to prohibit conversions, rather, conditions have been introduced that must be complied with before a conversion is approved. These requirements involve, to varying degrees, the protection of pre-conversion tenants, purchasers of converted units and in some cases, special protection for lower income elderly households and the handicapped.

As in the case of the Canadian jurisdictions examined above, it appears that the prime objective of these policies is to provide consumer protection rather than to preserve the affordable rental housing stock.

(1) New York City

In New York there are regulations protecting both tenants and purchasers during the process of condominium and cooperative conversions.

At present, there are two types of conversion plans: eviction plans and non-eviction plans.[13] Under an eviction plan the converter must obtain purchase agreements from at least 35% of the tenants in order to evict those who do not want to purchase. Under current rent control laws these latter tenants can remain in the converted building for as long as two years. Under the non-eviction plan a building can be converted if as few as 15 per cent of the existing renters buy. However, the converter cannot evict tenants who do not purchase. The converter can sell the units only as they become vacant.

In all cases, converters cannot evict persons over 62 years old who have resided in the building for more than two years and who have an annual gross income of less than $50,000. The handicapped also cannot be evicted.

In converting a building the owner must provide each tenant and prospective buyer with a prospectus containing detailed

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[13] Harold A. Lubell, "Regulating Conversions in New York: A Model for the Nation", Real Estate Review, Volume 10, Winter, 1981.

information about the building. The prospectus must be reviewed by the State of New York prior to the units being offered for sale.

There are no specific policies designed to protect the rental housing stock from conversion or demolition.

(2) Boston

The City of Boston adopted an anti-conversion law in 1986 which prohibited the conversion of rental housing to condominiums or co-operatives unless a "Removal Permit" had been issued by the Rental Board.[14] The Board was required to grant approval where a majority of tenants in the building agreed to purchase their units. Where a majority of tenants did not agree to purchase, the Board could grant "discretionary approval" after considering a number of factors including the impact of removing the units on certain tenant groups and the effect on the City's affordable rental stock. Tenant protection measures were also provided for.

The removal permit system was recently struck down on technical grounds by the Supreme Court of Massachusetts. As a result of

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[14] City of Boston, Removal Permits, Regulation 14, March 20, 1986.

this ruling, conversions are currently allowed in the City of Boston, however, a modified version of the tenant protection measures which were part of the removal permit system remain in place. First, in the event of a conversion, tenants must be guaranteed the opportunity to purchase their units. Second, tenants are eligible for a relocation allowance ($750-$1,000) to be paid by the owner. Finally, the extended notice provisions for certain groups have been replaced with a provision guaranteeing low-income, handicapped and elderly tenants with a certain income, security of tenure in the event of a conversion.

Previous to the enactment of the 1986 ordinance, the City of Boston had not attempted to monitor or control conversions. Controls were enacted in response to increasing numbers of conversions that were occurring during a booming real estate market and the growing problem of tenants being harassed by investors to gain possession of units so that rents could be raised. Although the city has rent control, since 1975, units have been decontrolled as they become available. Under the current rent control legislation, rents can be brought up to market levels when the unit becomes vacant.

(3) Los Angeles

Conversion policies were prevalent in the Los Angeles area during the early 1980's.[15] These policies tied conversion approval to vacancy rates and provided assistance for tenant relocation. The City of Los Angeles also requires a payment to the City of $500 per converted unit for the development of low-to-moderated income rental housing. The owner must also provide a list of available rental units within the area and transportation for residents with limited mobility. Rent controls were introduced in Los Angeles in 1978.

Conversion activity reached a peak in the late 1970's and since that time there has been a decline with de-conversions actually taking place in recent years. This activity has resulted due to an oversupplied condominium market with minimal price increases coupled with the fact that rent controls have not greatly depressed rent levels. Conversion is no longer a major issue in Los Angeles.

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[15] U.S. Department of Housing and Urban Development (HUD), The Conversion of Rental Housing to Condominiums and Cooperatives, A National Study of Scope, Causes and Impacts, Appendix 1, June, 1980.

(4) Washington D.C.

In Washington, a condominium/co-operative conversion ordinance has been in place since 1980[16] which specifies that 51 per cent of tenants must agree to the conversion and provides further protection for tenants in terms of notification of conversions and right of first refusal, relocation assistance and eviction rules for elderly tenants with income below a certain level. In addition, assistance to low income renters in the form of low income housing is provided through a fund supported by fees collected (4 per cent of the sales price of each unit) by the City.

In terms of buyer protection, the City requires that the owner provide a list of outstanding building code violations and either estimate costs to correct the problems or a statement of compliance with the code.

The result of such legislation is that conversions are limited to higher rent buildings because of the difficulty in gaining majority approval for conversion in low and moderate income buildings.

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[16] U.S. Department of Housing and Urban Development (HUD), The Conversion of Rental Housing to Condominiums and Cooperatives, a National Study of Scope, Causes and Impacts, Appendix 1, June 1980.

ALTERNATIVES FOR THE FUTURE

The Government intends to consider reforms to the present policy and believes that there is a spectrum of possible future approaches.

One extreme is to repeal the Act with no alternative measures. The Government does not believe that this alternative is viable in the present housing market. The vacancy rate remains low and it is likely that lifting the legislation would result in significant losses of affordable rental housing stock through conversions, demolitions and renovations.

The other extreme is to place an absolute prohibition on certain changes to the rental housing stock. The Government believes that this alternative, as well, is not a viable policy response. This alternative would greatly discourage investment in the rental property market and produce decay in the existing rental housing stock.

Between these two extremes, however, there are two broad possible approaches for future reforms which the Government believes warrant extensive consideration. The approaches provided below are presented in very general terms. As such, they are intended to represent general policy directions only. Respondents should not be constrained by the nature of the options provided.

Detailed responses related to the full range of issues raised by the Rental Housing Protection Act are welcome.

1. REPEAL THE ACT--TAKE ALTERNATIVE MEASURES

This option would allow the Act to be repealed. Present controls over changes to the existing rental stock would be lifted. In the absence of provincial development controls, alternative measures could be introduced, continued or expanded. Possible measures could include a combination of the following:

A) Conversion With Security of Tenure

Legislation could provide tenants the right of continued occupancy for a specified period where rental buildings are converted to condominiums.

Tenants could also be provided with the right of first refusal in order that those who want to purchase their unit would have precedence over outside purchasers. Those tenants who do not purchase could be assured of tenure despite the change in status of the building and the sale of their unit.

Other protective measures that address the interests of both pre-conversion residents and buyers of the converted units could be

provided. The experience in jurisdictions outside Ontario, most notably Quebec, provide examples of a regulatory framework that provides protection for those directly affected during the conversion process.

Measures dealing with tenant occupants who wish to purchase their buildings on a co-operative basis could also be developed. It is not necessary to repeal the Act to allow this to occur. Such an approach could also take place within the context of continuing development controls and is further explained in Option 2.

B) **Preservation of the Existing Stock**

Programs encouraging retention of existing affordable rental stock could be emphasized. Preservation of the existing affordable rental stock could be achieved through the provision of additional resources, incentives and investment vehicles to encourage the rehabilitation of rental buildings.

C) **New Supply-Participation of the Private Sector**

Emphasis could be placed on encouraging the private sector to participate in the production of new rental residential accommodation. Government could concentrate on developing programs that would encourage the creation of new affordable rental stock.

2. MODIFY THE ACT--CONTINUE CONTROLS WITH CHANGES

This alternative recognizes the need for continuing development controls to protect the existing rental stock. However, certain modifications to the present process of approval could be made. Possible areas where changes could occur include any or all of the following:

A) Shift From Mandatory to Permissive Legislation

Provincial legislation could enable municipalities to adopt, by by-law, controls to protect the existing affordable rental housing stock. By creating enabling legislation and providing municipalities with the option of adopting a set of controls or selected controls, the legislation may become more useful to municipalities in responding to local rental housing circumstances. Such an approach would place the onus on local and regional governments to protect their own rental stock.

Conversely, a subtle shift in this approach would have municipalities covered at the outset and require a municipality to opt out of a set of controls or selected controls.

Alternatively, the legislation could continue to be made mandatory for certain municipalities while others are exempted. With respect to mandatory coverage, revised criteria could be

used to determine which municipalities would be covered. Possible options include continuing with the same (i.e. 25,000) or a modified population threshold or using current vacancy rate statistics or employing other measures of local market activity to determine whether the legislation should apply.

B) Scope of the Act

Several matters can be considered:

i) Building Size, Type and Status

Issues include coverage of buildings of different size (i.e. 4 units or less); different type (i.e. apartment buildings versus converted houses); registered condominium properties which are fully rented; fully vacant buildings; and related groups of buildings.

ii) Range of Development Controls

Issues to be considered include whether the current activities restricted by the Act should be reduced, maintained or expanded. For example, it has been recommended that renovation and repairs be eliminated from coverage under the Act so as not to frustrate much needed repairs or upgrading or interfere with necessary building maintenance.

C) Criteria

Several criteria have been set out by regulation that municipal councils must consider in rendering a decision on an application. At least one of the criteria must be satisfied for approval to be given. There are three issues to be considered:

i) Should the criteria be strengthened, maintained as is or weakened?;

ii) Should the criteria be made more specific, maintained as is or generalized?; and

iii) Should different criteria be used for the various activities covered by the Act?

Several municipalities have indicated that the criteria are too general and provide little guidance thus making it difficult for councils to render decisions. Also of concern is the impact this approach has had on the consistency of decision-making both within regions and province-wide. More specific criteria would increase consistency although local autonomy in rendering decisions would necessarily be reduced.

The criteria could also be modified to allow development activities to occur under certain conditions. For example, condominium conversion might be allowed in cases where there is demonstrated support for conversion among existing tenants and those who do not purchase are provided security of tenure protection.

Similarly, currently tenant occupants who wish to purchase their buildings on a non-profit co-operative basis are allowed to do so. Policy could be developed which would facilitate such a change in ownership of rental buildings while providing protection for those tenants who do not wish to become members of the co-operative.

Building incentives could also be built into the process. For example, building owners could be allowed to convert their rental property to condominiums provided they contribute to the provision of new rental supply. This contribution could take several forms. Owners could be required to reinvest at least some of the proceeds from the sale in new rental properties, or, more specifically, to replace a certain percentage of the affordable rental units lost or contribute to a fund which would be directed to the provision of new affordable rental stock.

The current Act uses the same criteria in reviewing applications for each of the development activities covered. An alternative approach would be to utilize different criteria depending on the development activity proposed in the application. For example, certain activities such as renovation and repair, could operate under one set of criteria while condominium conversion applications would be considered according to different criteria.

D) Appeal Process

The current two-stage appeal process could be modified by dropping the second stage petition to Cabinet. In the absence of an appeal route to Cabinet, the Ontario Municipal Board would hear all appeals and render a decision that would be final and binding.

A variation of this option would allow petitions to Cabinet of OMB decisions where the matter in dispute is determined to be "in the Provincial interest". This route would parallel the current approach used respecting disputes arising under the Planning Act.

E) Approval Process for Condominium Applications

As a result of the Rental Housing Protection Act, authority to render decisions on condominium conversion applications rests with local municipalities. Applications for new condominiums or for existing residential rental properties exempted from the Act continue to be dealt with by the Ministry of Municipal Affairs or the delegated authority.

The authority to render decisions on condominium conversion applications could be returned to the Minister of Municipal Affairs and any municipality to whom authority had been

delegated. The result would be a return to the situation which prevailed prior to the passage of the Act when all condominium applications were dealt with by the Minister of Municipal Affairs or the delegated authority.

APPENDIX 1

Other Rental Housing Protection Act Applications

The current status of applications made under the Rental Housing Protection Act re: the conversion of rental units to a use other than condominium ownership; severances; demolitions; and renovations or repairs is as follows:

CONVERSION TO ANOTHER USE

Municipality	Units	Refused/ Withdrawn	Approved	Pending	Appealed
Cambridge	3	-	-	3	-
Kingston	7	-	7	-	-
London	6	-	6	-	-
Ottawa	14	-	7	7	-
Sudbury	5	5	-	-	-
TOTAL	35	5	20	10	0

SEVERANCES

Municipality	Units	Refused/ Withdrawn	Approved	Pending	Appealed
Hamilton	2	-	2	-	-
Kitchener	1	-	1	-	-
Ottawa	9	-	9	-	-
TOTAL	12	0	12	0	0

DEMOLITIONS

Municipality	Units	Refused/ Withdrawn	Approved	Pending	Appealed
Cornwall	22	-	22	-	-
Etobicoke	31	-	-	-	31
Hamilton	54	-	-	54	-
Kitchener	186	8	114	64	-
London	46	11	35	-	-
Ottawa	112	-	32	80	-
Sarnia	60	-	60	-	-
Toronto	98	-	-	98	-
Other	42	-	20	22	-
TOTAL	651	19	283	318	31

RENOVATIONS AND REPAIRS

Municipality	Units	Refused/ Withdrawn	Approved	Pending	Appealed
Barrie	14	-	14	-	-
Hamilton	39	-	-	39	-
Kingston	5	-	2	3	-
Ottawa	14	2	8	4	-
Toronto	34	9	20	5	-
York	16	-	-	16	-
TOTAL	122	11	44	67	0

Ontario

Ministry
of
Housing
Chaviva Hosek, Minister